

Brief of Argument in Excess of Required Number of Pages – Validity in Election Matters

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 15th Day of September, 2023

Before Their Lordships
Musa Dattijo Muhammad
Helen Moronkeji Ogunwumiju
Adamu Jauro
Tijjani Abubakar
Emmanuel Akomaye Agim
Justices, Supreme Court

SC/CV/788/2023

Between

1. UCHE GEOFFREY NNAJI
2. ALL PROGRESSIVES CONGRESS (APC)

APPELLANTS/
APPLICANTS

...

And

1. MBA PETER NDUBUISI
2. PEOPLES DEMOCRATIC PARTY
3. EDEOGA CHIJOKE JONATHAN
4. LABOUR PARTY
5. NWEKE FRANK NNAEMEKA (JNR)
6. ALL PROGRESSIVES GRAND ALLIANCE (APGA)
7. INDEPENDENT NATIONAL ELECTORAL COMMISSION

RESPONDENTS

(Lead judgement delivered by Honourable Justice Tijjani Abubakar, JSC)

Facts

The Appellants were the Petitioner at the trial Governorship Election Petition Tribunal Holden at Enugu. On 6th June 2023, the Appellants, before filing their Reply to the Petition, applied for issuance of Pre-hearing Notice and served same on the 5th & 6th Respondents. On 8th June 2023, the Appellants filed their Reply but

failed to apply for issuance of another Pre-hearing Notice within seven (7) after filing their Reply. Consequent upon this, the trial tribunal dismissed the Petition as having been abandoned for failure to apply for the issuance of Pre Hearing Notice in compliance with Paragraph 18(1) of the 1st schedule to the Electoral Act 2022, and aborted the pre-hearing session that was to commence. The tribunal also ruled that the application for issuance of Pre-hearing Notice served before filing their Reply to the Petition was premature and therefore, incompetent. Dissatisfied with the preliminary determination of the Petition, the Appellants appealed to the Court of Appeal, which court affirmed the decision of the tribunal and dismissed the appeal. The Appellants appealed further to the Supreme Court.

At the apex court, the Appellants filed their Brief of Argument. The 1st Respondent in his Respondent's Brief of argument raised a Preliminary Objection to the hearing of the appeal on the basis that the Appellants' Brief exceeded forty (40) pages. He posited that the said brief is in violation of Order 10 Rule 1(a) of the Supreme Court Pre-Election Appeals Practice Directions, 2023 and thus, incompetent and liable to be struck out. The Appellants, seeking to rectify their position, filed a motion seeking *inter alia*, a departure from the rules of the Supreme Court and an Order to deem the brief filed in excess of the stipulated forty pages as properly filed. The 1st Respondent filed a Counter Affidavit and Written Address, opposing the grant of the application.

Issue for Determination

The Supreme Court adopted the sole issue for determination raised by the Appellants, in its determination of the application:

Whether the Appellants/Applicants have shown in law and fact that they are entitled to the reliefs sought.

Arguments

Submitting on the application, the Appellants contented that by the provisions of Order 2 Rule 31(1) of the Supreme Court Rules 1999 (as amended), the Supreme Court may enlarge the time provided by the rules of court for the doing of anything to which the rules apply or may direct a departure from the rules in any other way when so doing is required in the interest of justice. Counsel relied on the case of **DINGYADI & ANOR v INEC & 2 ORS (2010) NWLR (PT. 1224)**, to argue that the Supreme Court had interpreted the effect of Order 2 Rule 31(1) of the Supreme Court Rules that departure from the rules may be granted in the interest of Justice and the court has the power to waive compliance with its Rules

in exceptional circumstances especially where the court finds so doing serves the best interest of justice.

The 1st Respondent opposed the submission. He argued that the Appellants' Brief of Argument which exceeded the forty pages limit without the prior direction of the court is invalid. He argued that the governing provision which delimits number of pages for any brief in an election matter is the Pre-election and Election Appeals Practice Directions, 2023 but counsel for the Appellants decided to take refuge in Order 2 Rule (31) of the Supreme Court Rules. Counsel submitted that the provisions of the Supreme Court Rules cannot apply where there is a Practice Direction purposely crafted to apply in the instant case. He argued that the number of pages in a Brief of Argument has been specifically regulated under paragraph 10(1) (a) and (3) of the Supreme Court Pre-Election and Election Appeals Practice Directions 2023, it will therefore be inappropriate to have recourse to the general provisions in the rules of court where in fact specific provisions have been provided. He submitted that where there is a general provision and specific provision on a matter, the specific provision on the matter shall apply - **AJAYI v ALALADE (2015) 5 NWLR (PT. 1452) 380** and that any breach of the provisions of paragraph 10(1) (a) and (3) of the Supreme Court Pre-Election and Election Appeals Practice Directions, 2023 renders the process invalid and incompetent. According to him, the only action that will inject life into the process is where the court, before filing the process, directs the party to proceed to file the process in excess of the number of pages limited by the practice direction, placing emphasis on the words "*except otherwise directed by the Supreme Court...*". Counsel argued that where a condition precedent exists and same is not satisfied, the act carried out must be held to be invalid **ADEKEGBA v MIN OF DEFENCE (2013) 17 NWLR (PT. 1382) 126 at 147**.

By way of reply, the Appellants stated that the argument on inapplicability of Order 2 Rule 31 of the Supreme Court Rules to the instant application, constitutes a misconception of the law. Counsel also addressed the argument on general and specific provisions of statutes and contended that there is no conflict between the two provisions. He urged the court to discountenance the submissions of the 1st Respondent in the interest of justice.

Court's Decision and Rationale

Prefatorily, the Apex Court, *per* Tijjani Abubakar JSC expressed dissatisfaction with the Reply on points of law filed by the Appellants and held that *a reply on points of law is not meant to improve on the quality of a written address; it is mainly an*

opportunity to address new issues arising from the address of the Respondent. The Appellants/Applicants reply on points of law turned out to be more elaborate than the written address in support of the application.

Deciding on the issue raised by the Appellants, the apex court held that from the paragraphs of the affidavit in support of the Application, counsel to the Appellant admitted inadvertence in the process of preparation and filing of the Appellants' brief. Counsel was aware that the Practice Direction does not allow them to file an Appellants' brief in excess of forty pages but decided to come under the Supreme Court Rules. *The law is very well settled that judicial inquiry terminates as soon as it appears clear that the language of the statute is clear plain and unambiguous - AMAECHI v. INEC (2008) 5 NWLR (PT. 1080) 227 SC. The Appellants cannot embark on any form of gymnastics by picking and choosing which law to apply.*

The Supreme Court held that from the wordings of Paragraph 10(1)(a) and (3) of the Supreme Court Pre-Election and Election Appeals Practice Directions, 2023 which states that "except otherwise directed by the Supreme Court...", the Appellants must first seek for and obtain leave before filing the process in excess of forty pages. Where a party on his own decides to act in flagrant disregard of the provisions of the law, he cannot turn around and seek for endorsement of an illegal act by the court. Where a condition precedent is mandatory for doing an act, the failure to fulfil the pre-condition will render the act null and void. Failure to comply with condition precedent becomes more unpardonable where it is manifested in an election matter being time bound and sui generis.

It was strange that counsel for the Appellant opted to rely on the 1999 Rules of the Supreme Court when in the affidavit in support, he clearly admitted that the 2023 Practice Direction does not allow more than forty pages. The apex court therefore held that the Appellants have not filed a valid and competent Appellants' Brief of Argument and have not in any way established legitimate grounds for the court to grant the application.

His Lordship, Honourable Emmanuel Akomaye Agim, JSC stated that the decision of the court strictly and mandatorily applying the provisions of Order 10 Rule 10 (1) and (3) of the Supreme Court Pre-election and Election Appeal Practice Direction 2023 and the resulting refusal of the Appellants' application and the dismissal of their appeal is in keeping with the judicial precedent and the doctrine of *stare decisis*. His Lordship however remarked that there is need for a reconsideration of our current judicial approach in the application of rules of procedure in election matters, noting that the current judicial approach is a relaxed

and permissive application of procedural rules in other types of civil proceedings. Judicial determination of questions concerning their validity should not be allowed to be aborted. It is the intendment of Sections 232(2)(e), 246(1)(b) and (c) and 285(1) and (2) of the constitution that the question to be determined by the tribunals and courts in election cases is whether a person has been validly elected into an office or ceased to hold that office and no other question. Where a strict application of any rule of procedure in the 1st schedule to the Electoral Act or any of the Practice Directions would defeat the determination of the merit of the questions, the court would condone the non-compliance and treat it as a mere irregularity that would not vitiate the proceedings.

DISSENTING OPINION OF HONOURABLE HELEN MORONKEJI OGUNWUMIJU, JSC.

His Lordship opined that by the authority of **TSOKWA OIL v BON (2002) 11 NWLR (PT. 777) 163**, *a preliminary objection does not estop the Applicant from taking steps to remedy defects in his process*. The words of paragraph 10(1) make it discretionary for the court to grant or refuse the Appellants' application to countenance the brief in excess of forty pages. The court can refuse the motion and rule that it would only look at the first 40 pages of the brief and regard the remaining pages as garbage or surplusage as the Practice Directions do not give the court the discretion to invalidate the brief for that reason alone. It is clear that the only sanction provided by the Practice Directions of the court is that the brief should not be accepted by the Registry. Nowhere in paragraph 10 of the Practice Directions is the word "invalid" used in relation to a brief in excess of forty pages. In the case of **MAKINDE v. ADEKOLA (2022) 9 NWLR (PT.1834) 13 at 36** the Supreme Court had held that *where such a brief had in fact been accepted by the Registry of this court, the excessiveness of the pages of the brief contrary to paragraph 9(a) of the Practice Directions on Election Appeals (2010) "... is not enough reason to strike out the brief"*. His Lordship concluded that the strict interpretation of Section 285 of the 1999 Constitution (as amended) must not translate into the truncating substantial justice. Given the above, the Honourable Justice exercised discretion and granted the Appellants' application in the interest of justice. The preliminary objection was overruled.

Appeal struck out on a majority decision of 4:1.

Representation

C.I. ENWELUZO SAN with others for the Appellants.

BODE OLANIPEKUN SAN with others for the 1st Respondent.

C.S. EKEOCHA ESQ, with others for the 2nd Respondent.

KAINE ANANWUNE ESQ for the 3rd and 4th Respondents.

C.I. MBAERI ESQ., for the 5th Respondent.

VICTOR AGUNZI ESQ. for the 6th Respondent.

OLANREWAJU KINSOLA ESQ for the 7th Respondent.

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